IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14379 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KOLI POPATJI DHULAJI & 3 - Petitioner(s)

Versus

STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :

MR BHARAT T RAO for Petitioner(s) : 1 - 4.MR ANAND R PATEL for Petitioner(s) : 1 - 4.
MR SIRAJ GORI, AGP for Respondent(s) : 1 - 4.
MR MEHUL H RATHOD for Respondent(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 15/12/2005

ORAL JUDGMENT

In the present petition, the petitioners have challenged the order dated 14.8.2003 passed by the Joint Secretary (Appeals), Revenue Department, Government of

Gujarat. By the impugned order, though the Joint Secretary was pleased to reject the revision application filed by respondent No.5 herein, in the operative portion it was provided that the orders dated 26.3.98 passed by the Collector, Banaskantha is set aside and entry No.1263 is quashed and the land should be taken under the Government head and fresh proceedings under section 37(2) of the Bombay Land Revenue Code should be initiated.

2. Learned advocate for the petitioners submitted that the order passed by the Collector on 26.3.98 was in favour of the petitioners and that therefore though ostensibly the Joint Secretary rejected the revision application filed by respondent No.5, effectively the order in favour of the petitioners came to be set aside. He submitted that no notice was issued to the petitioners before passing the impugned order. In this regard, the learned advocate for the petitioners drew my attention to the averments made in ground 4.B of the petition wherein it has been stated that no opportunity of being heard was given to the petitioners before passing the order and that the petitioners were not aware about the fact that respondent No.5 had preferred such an appeal before the Joint Secretary and no notice of hearing was given to the

petitioners before passing the impugned order. Though affidavit in reply has been filed by the Government, this assertion made by the petitioners on oath has not been denied.

3. Conclusion of the above recording of events would be that the Joint Secretary upset the order passed by the Collector on 26.3.98 which was in favour of the petitioners without even issuing notice to them. On this short ground alone, the order passed by the Joint Secretary cannot be sustained.

4. In the result, the petition is allowed. The order dated 14.8.2003 passed by the Joint Secretary is set aside. The proceedings are remanded to the said authority for fresh consideration after hearing all concerned parties including the petitioners. This may be done expeditiously and preferably within a period of four months from the date of receipt of a copy of this order. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)

(vjn)